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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/436,387 02/07/00 BARRETT

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EXAMINER

GREGORY, B

ART UNIT	PAPER NUMBER
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3662

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DATE MAILED: 08/03/01

LARRY L COATS
COATS & BENNETT P L L C
1100 CRESCENT GREEN SUITE 206
CARY NC 27511

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 16

Application Number: 09/436,387
Filing Date: February 7, 2000
Appellant(s): Rolin F. Barrett, Jr.

Edward H. Green, III
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed July 17, 2001.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) *Grouping of Claims*

The rejection of claims 30-32 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 30-32 are rejected under 35 U.S.C. 251. This rejection is set forth in prior Office action, Paper No. 12.

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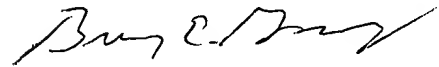
(11) *Response to Argument*

On lines 9-10 of page 8 of Applicant's Appeal Brief, it is stated that "control of an in-flight bullet fired from a rifled barrel that imparts axial spin to the projectile" is subject matter that "was surrendered during prosecution" of the patent that is the subject of this reissue application. In looking at the preambles of independent claims 30 and 32, each states that the claim is directed to use on a "rifle bullet." Claim 30 is directed to an onboard method of generating signals related to the orientation of the bullet, where those signals are used in control of the bullet. Claim 32 is directed to an onboard system for determining the orientation of the bullet, where the determination is used in control of the bullet. Dependent claim 31 is dependent from independent claim 30, so it is directed to the same general subject matter as claim 30. Thus, first, claims 30-32 are directed to onboard (i.e., in-flight) control activity of a rifle bullet. The word onboard must mean "in-flight" in this context in that the control of a motionless bullet is meaningless. Second, any rifle has "a rifled barrel that imparts axial spin to the projectile," so the mere use of the term "rifle bullet" in claims 30 and 32 meets the idea of "a rifled barrel that imparts axial spin to the projectile" that is part of the subject matter that Applicant admits was surrendered. In conclusion, by Applicant's admission on lines 9-10 of claim 8 of Applicant's Appeal Brief, the subject matter of claim 30-32 was surrendered during the prosecution of the patent on which this reissue application is based. Therefore, the rejection of record of claims 30-32 under 35 USC § 251 for recapture is appropriate and should be sustained.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Bernarr E. Gregory
Primary Examiner
Art Unit 3662

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August 1, 2001

Edward H. Green, III
Coats & Bennett, P.L.L.C.
P.O. Box 5
Raleigh, NC 27602